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UNITED STATES OF AMERICA,)	
Complainant,)	8 U.S.C. § 1324a Proceeding
)	
v.)	OCAHO Case No. 95A00164
)	
MARK CARTER d/b/a)	
DIXIE INDUSTRIAL SERVICE CO.,)	
Respondent.)	Judge Robert L. Barton, Jr.
)	

On June 10, 1996 Complainant filed a motion for partial summary decision with respect to liability as to certain allegations raised in count IV of the complaint; specifically the allegations regarding seven allegations in the complaint (Jose Carillo, David Cepeda, Solomon Faz, Louis Hadley, Samuel Hadley, Humberto Hernandez and Jose Herrera). Complainant explicitly states in its motion that it is not seeking summary decision as to penalty, only liability. Count IV of the complaint alleges that Respondent hired these individuals without properly completing section 2 of the I-9 form. Complainant correctly notes in its motion that to prove the violations alleged in count IV, it must prove that the Respondent hired the individuals and failed to properly complete section 2 of the I-9 form. In support of its motion Complainant has attached the I-9 forms for the seven individuals and Complainant's First Request for Admissions and Genuineness of Documents.

In its response to the motion Respondent states that it does not oppose Complainant's third motion for summary decision as it pertains to liability only. Respondent does object to the motion in so far as it relates to the quantum of penalty and relies on its response to Complainant's second motion for partial summary decision.

A motion for summary decision may be granted if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. See Celotex Corp. v. Catrett, 477 U.S. 317 (1986; Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986). Here, as to liability with respect to the seven individuals, it appears from Complainant's motion, the documents offered in support thereof, and Respondent's response, that there are no facts in dispute.

Respondent admitted in its response to the First Request for Admissions that it produced I-9 forms for these individuals. Moreover, the I-9 forms for all seven individuals lack a date in the certification part of section 2 of the I-9 form. As I ruled during the prehearing conference on May 15, 1996, an employer does not substantially comply with the requirements of the Immigration and Nationality Act if the I-9 form lacks a date for the employer's certification in section 2. See May 23, 1996 Prehearing Conference Report and Order, at 9. Consequently, I grant Complainant's motion for partial summary decision as to liability with respect to the allegations in count IV as they pertain to Jose Carillo (§A4), David Cepeda (§A5), Solomon Faz (§A8), Louis Hadley (§A10), Samuel Hadley (§A11), Humberto Hernandez (§A12), and Jose Herrera (§A14).¹ The appropriate penalty for these violations remains a viable issue. It is Complainant's burden to prove the reasonableness of the penalty requested for these violations.


ROBERT L. BARTON, JR.
ADMINISTRATIVE LAW JUDGE

¹ The paragraph reference are to subsection A of count IV of the amended complaint filed on April 12, 1996.

CERTIFICATE OF SERVICE

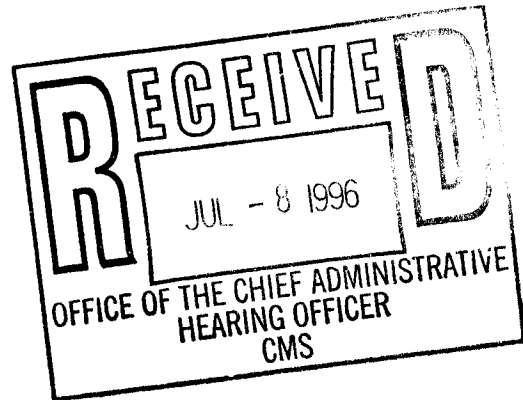
I hereby certify that on this 8th day of July 1996, I have served copies of the foregoing Order Granting Complainant's Third Motion for Partial Summary Decision to the following persons at the addresses shown:

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